

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

JIM KERSEY
Plaintiff,

VS.

CLAIRE MIAZGA AND ANDREW
MIAZGA
Defendant.

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CASE NO.: 5:20-cv-694

DEFENDANTS NOTICE OF REMOVAL TO UNITED STATES DISTRICT COURT

Defendants CLAIRE MIAZGA AND ANDREW MIAZGA hereby remove this lawsuit, which is currently pending in the 285th Judicial District of Bexar County, Texas, Cause No. 2020-CI-03353, to the United States District Court for the Southern District of Texas, San Antonio Division, pursuant to 28 U.S.C. §§ 1441 and 1446 and on the grounds of diversity of citizenship and amount in controversy. In support, Defendants would respectfully show the Court as follows:

I.
PARTIES

1. Plaintiff, JIM KERSEY, is an individual who resides in San Antonio, Bexar County, Texas.

2. Defendant, Claire Miazga, is an individual who resides in Niceville, Okaloosa County, Florida.

3. Defendant, Andrew Miazga, is an individual who resides in Niceville, Okaloosa County, Florida.

II.
BACKGROUND OF STATE COURT ACTION

4. On February 14, 2020, Plaintiff filed his Original Petition styled *Jim Kersey vs. Claire Miazga and Andrew Miazga*, in the 285th Judicial District Court of Bexar County, Texas, Cause No. 2020-CI-03353. *See Exhibit A* (Plaintiff's Original Petition). Plaintiff's Original Petition alleges negligence and negligent entrustment causes of action based on a claim for personal injuries arising out of a motor vehicle accident that occurred on May 14, 2018 in San Antonio, Bexar County, Texas. *See Exhibit A*.

5. Plaintiff served Defendant Claire Miazga on May 16, 2018. *See Exhibit B* (Affidavit of Service).

6. Plaintiff served Defendant Andrew Miazga on May 16, 2018. *See Exhibit C* (Affidavit of Service).

III.
GROUND FOR REMOVAL

7. This Court has original jurisdiction of this suit based on 28 U.S.C. §1332(a) because this suit involves a controversy between citizens of different states and there is complete diversity between the parties at the time of the filing of the suit and at the time of the removal. Further, the amount in controversy, exclusive of interest and costs, exceeds \$75,000.00.

Parties are Diverse

8. Plaintiff is a natural person whose pleading affirmatively asserts that she is a resident and citizen of Texas. *See Exhibit A*. Plaintiff has not pled any other facts regarding his residency, intention to leave Texas, or domiciles in other states. *Id.* Accordingly Plaintiff's citizenship at the time of the filing of the suit and at the time of removal is properly established as the State of Texas. *See Hollinger v. Home State Mut. Ins. Co.*, 654 F.3d 564, 571 (5th Cir. 2011).

9. Defendant Claire Miazga is a citizen of the State of Florida.

10. Defendant Andrew Miazga is a citizen of the State of Florida.

11. Based on the foregoing, there is complete diversity between the parties.

Amount in Controversy

12. The party seeking federal jurisdiction must prove by a preponderance of the evidence that the amount in controversy exceeds \$75,000.00. *Grant v. Chevron Phillips Chem. Co. L.P.*, 309 F.3d 864, 868 (5th Cir. 2002). The removing party may satisfy its burden by either (1) demonstrating that it is “facially apparent” from the petition that the claim likely exceeds \$75,000.00, or (2) “by setting forth the facts in controversy – preferably in the removal petition, but sometimes by affidavit – that support a finding of the requisite amount.” *Allen v. R & H Oil & Gas Co.*, 63 F.3d 1326, 1335 (5th Cir. 1995).

13. Here, it is facially apparent from Plaintiff’s petition that the amount in controversy exceeds \$75,000.00. Specifically, Plaintiff’s states the following with regard to damages sought ...“as required by Texas Rules of Civil Procedure 47, Plaintiff seeks monetary relief of great than \$500,000”. See **Exhibit A**.

14. Based on the foregoing, the amount in controversy exceeds \$75,000.00.

IV.
REMOVAL IS PROCEDURALLY PROPER

15. This Notice of Removal is timely filed within thirty (30) days after receiving notice of the suit. See 28 U.S.C. § 1446(b)(1).

16. Venue is proper in this Court under 28 U.S.C. § 1441(a) because this District and Division of this Court embraces Bexar County, Texas, the place where the State Court suit was filed.

17. Pursuant to 28 U.S.C. § 1446(a), all pleadings, process, orders, and all other filings in the state court action are attached herein.

18. Pursuant to 28 U.S.C. § 1446(d), Defendant will promptly provide a true and correct copy of this Notice of Removal to Plaintiff and to the Bexar County Clerk.

19. Both Defendants join in this removal and hereby consent to removal, should same be necessary.

V.

DOCUMENTS INCLUDED IN NOTICE FOR REMOVAL

20. Pursuant to 28 U.S.C. § 1446(a), the following documents are attached to this notice:

<u>Exhibit A</u>	Plaintiff's Original Petition
<u>Exhibit B</u>	Affidavit of Service of Claire Miazga
<u>Exhibit C</u>	Affidavit of Service of Andrew Miazga
<u>Exhibit D</u>	State Court Docket Sheet/Case Summary

VI.

PRAYER

WHEREFORE, Defendants Claire Miazga and Andrew Miazga pray that the Court accept jurisdiction over this case against them for the reasons set forth above, and grant Defendants any such other and further relief to which they show themselves justly entitled.

Respectfully submitted,

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/s/ Jose "JJ" Trevino, Jr.

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***ATTORNEY FOR DEFENDANTS CLAIRE
MIAZGA AND ANDREW MIAZGA***

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing instrument was served on all parties through counsel of record pursuant to the Texas Rules of Civil Procedure on June 11, 2020, in the manners prescribed below:

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